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ARIZONA ATTORNEY GENERAL

DEPARTMENT OF LAW OPINION NO. 71-28 (R-69)

REQUESTED BY: LOUIS C. KOSSUTH, M.D., M.P.H.  
Commissioner of Health  
Arizona State Department of Health

- QUESTIONS:
1. Is the Board of Health authorized to interpret and limit the effective scope of the terms "equipment" and "other property" as they are contained in the definition of "facilities" in A.R.S. Section 36-401.9?
  2. May home health agencies, as defined in A.R.S. Sections 36-151, et seq., be included in the definition of "health care institutions", as found in A.R.S. Section 36-401.11?

- ANSWERS:
1. Yes.
  2. See body of opinion.

Chapter 196 of the Laws of 1971 (House Bill 15), amending Title 36, Arizona Revised Statutes, by adding a new Chapter 4, to-wit: A.R.S. Sections 36-401 through 36-450.04, will become effective on January 1, 1972. These sections dealing with health care institutions replaced former sections which empowered the Arizona State Department of Health to license hospitals, nursing homes, sheltered care homes and the like. It became apparent that the former classifications were inadequate and did not contemplate the recent proliferation of institutions which do not fit into those classifications. It was necessary, therefore, to give a broad definition to the term "health care institution" so that the Department might license not only those former classes of institutions but also may include infirmeries and diagnostic and treatment centers. The definition, however, should not be so broad as to render the statute unconstitutional. Cf. Shenfield v. City Ct. of City of Tucson, Pima County, 8 Ariz. App. 81, 443 P.2d 443 (1968); A.R.S. Section 36-405.B. Certain exemptions were provided by the Legislature, as found

in A.R.S. Section 36-402, although the Board of Health will no doubt include or exclude different institutions in the process of classifying and subclassifying, as provided for in A.R.S. Section 36-405.

A.R.S. Section 36-401.11 states as follows:

"11. 'Health care institution' means every place, institution, building or agency, whether organized for profit or not, which provides facilities with medical services, nursing services, or health-related services." (Emphasis added.)

A.R.S. Section 36-401.9 states as follows:

"9. 'Facilities' means buildings, equipment or other property used by a health care institution for providing any of the types of services as defined in this chapter." (Emphasis added.)

You will note from the foregoing definitions that a "health care institution" is one which provides facilities. The term "or other property" is extremely broad and, if interpreted in a liberal manner, could include the acquisition of such items as bandages, bed pans, wheel chairs, drugs and the like. If that definition were applied, then the statutory burdens on the Department would be impossible to meet.

For example, "construction" or "modification" of a health care institution, as provided for in A.R.S. Section 36-421, requires a permit to be issued by the Department. construction, as defined in subsection 5 of A.R.S. Section 36-501, includes the acquisition of facilities for health care institutions. This would mean that the acquisition of minor pieces of equipment or supplies would be construction and, therefore, require a permit. This, of course, is an absurd result. "Courts will not place an absurd and unreasonable construction on statutes." State v. McFall, 103 Ariz. 234, 439 P.2d 805, 809 (1968).

Likewise, modification, as defined in subsection 15 of that section includes changes in the facilities or in the services provided by such an institution. The Legislature employed in that definition the qualifying word "substantial",

which term we believe modifies not only the first portion of the sentence but the entire sentence, so that a substantial change in facilities or services provided by the institution will be required to be a modification. This reading, in conjunction with common sense reading of the term "construction, which is required in face of the insurmountable problems if any other interpretation is applied, requires a narrow interpretation of the term "facilities". Under this interpretation, then, "facilities", as referred to in A.R.S. Section 36-401.9 means any buildings, equipment or other property of a substantial nature used by a health care institution. Statutes must necessarily be construed as a whole. Cf. Greyhound Parks of Arizona, Inc. v. Waitman, 105 Ariz. 374, 464 P.2d 966 (1970).

This office cannot give you a factual standard to determine what is a substantial piece of property or equipment as those terms may be applied in trade usage in hospitals, clinics, nursing homes, etc. It is, therefore, incumbent upon the Department to determine, on the facts of each case, when a piece of equipment or property is of such a nature as to require supervision of its acquisition, installation and operation. This obligation is wholly consistent with the powers and duties of the Department, as set forth in A.R.S. Sections 36-401 and 36-421. In so doing, the Department will have to give full consideration to the intent of the Legislature. Cf. Sloatman v. Gibbons, 104 Ariz. 429, 430, 454 P.2d 574 (1969).

Likewise, the Board will also have to determine what a "service" is, as referred to in the definition of "modification". When this matter has been determined, then substantial improvements, enlargements, reductions, movements, alterations, additions to or other changes in the services provided by such an institution will require regulation by the Department.

Your second question concerns what is known as "home health agencies", as found in A.R.S. Sections 36-151, et seq. As you are aware, the Department of Law Opinion No. 71-27, directed to the Department of Insurance, determined that a "home health agency" at the present time is not "licensed", as it is referred to in Chapter 171 of the Laws of 1971. Nor is the certification made by the Department on behalf of the United States Department of Health, Education and Welfare, the equivalent of licensing. The question, therefore, becomes one of whether a home health agency is a health care institution as contemplated by A.R.S. Section 36-401.

It is our opinion that a "home health agency" meets the minimum definition of a "health care institution" and, therefore, is subject to licensure by the Department. We have reached this conclusion based on information garnered from the Department concerning the nature of the services rendered and the equipment supplied or utilized by "home health agencies". The equipment and supplies appear to be of the nature of nursing equipment, hospital-type beds, wheelchairs, canes, respirators, heat lamps and pads, iron lungs, and the like. Although this equipment may require relatively large expenditures by the individual patient, it is for the Department to determine if and when such equipment is of a "substantial" nature, requiring permits for modification or construction. Although it is an agency providing nursing or health related services, with some facilities, it is generally accepted that a "home health agency" provides low cost services and acts as a conduit between the patient and supplier of either equipment or services. The foregoing is an additional indication that a home health agency may never acquire buildings, equipment or other property of a substantial nature, requiring a permit for construction or modification.

Although A.R.S. Section 36-401 requires nursing services to be under the direct supervision of a registered nurse, A.R.S. Section 36-151 requires that services provided by home health agencies be under the general control of a physician or registered nurse, and does not require that the therapist or aide serving the patient be under such direct supervision. In situations of this nature the special legislation (A.R.S. Sections 36-151 to 36-160, inclusive) would control. State v. Marcus, 104 Ariz. 231, 234, 450 P.2d 689 (1969).

The foregoing, however, should not preclude the Department from excluding from the definition of "health care institutions" other services which are not "institutional" in the general sense as understood by the Department and industry. This office will endeavor to assist the Board and the Department in the formulation of the appropriate classes and subclasses of health care institutions.

Respectfully submitted,

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by F.S.

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